

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 5-23-01 Item: 3.f.

File Number
CP 97-12-074

Application Type
Conditional Use Permit

Council District
5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
484-04-028,29,31 10, 11, and 12

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Susan Walsh

Location: Southeast corner of Alum Rock Avenue and Madden Avenue

Gross Acreage: 27.37 acres

Net Acreage: 27.37 acres

Net Density: N/A

Existing Zoning: R-1-8 Residence, CN Commercial Neighborhood, CG General Commercial

Existing Use: Cemetery

Proposed Zoning: No change

Proposed Use: Demolition of two residences to allow for a 1.17-acre expansion of the cemetery burial area, construction of a landscaped corner entry sign, 5-year extension of a temporary modular building, and general site improvements including grading, fencing, landscaping and street improvements

GENERAL PLAN

Completed by: Susan Walsh

Land Use/Transportation Diagram Designation
Private Open Space, General Commercial and Neighborhood Commercial(Alum Rock Neighborhood Business District)

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Susan Walsh

North: Multi-family attached residential

RM Residence

East: Single-family detached residential

R-1-8 Residence

South: Commercial

C-2 Commercial

West: Single-family detached residential

R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: Susan Walsh

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Susan Walsh

Annexation Title: Alum Rock No. 4 (Existing Cemetery)

Date: 4-30-71

McKee No. 20 (Expansion Area)

12-18-59

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

The Roman Catholic Bishop of San Jose, 2655 A Madden Avenue, San Jose, CA 95116

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Susan Walsh

Department of Public Works

See attached memo and conditions.

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, the Roman Catholic Bishop of San Jose, is seeking a new CUP to cover their entire site which includes the demolition of two residences (located at 24 and 48 Alexander Avenue) and a 1.17- acre expansion of the cemetery for new burial sites. The expansion of the cemetery will involve some grading, landscaping and fencing on the two lots on Alexander Avenue to ensure compatibility with the adjacent residential uses. A landscaped and fenced buffer along Alexander Avenue will be provided. The project includes the construction of a new entryway sign and statuary monument on the northeast corner of Alum Rock Avenue and Alexander Avenue landscaping, street lighting and street improvements on Alexander and Madden Avenues. The proposal also includes a request for a 5-year extension for an existing temporary modular office building. Due to the financial difficulties the cemetery has been unable to construct a permanent office as they had planned and as a result they are proposing a 5-year extension for the temporary modular office building. .

The surrounding land uses include single family residential to the east across Capitol Avenue and the west along Alexander Avenue, multi-family attached residential uses to the north on Madden Avenue, and commercial uses across Alum Rock Avenue to the south.

The Cemetery owns many of the residences along Alexander Avenue and their plans are to purchase the remaining lots and convert the rest of this area along Alexander to burial sites in the future.

The existing cemetery has been in continuous use for over 100 years. The master plan for the cemetery shows the super block bounded by Madden Avenue on the north, Alexander Avenue on the west, Alum Rock Avenue on the south and Capitol Avenue on the west planned for cemetery use in the future. Currently the majority of the block is used as cemetery with the exception of a few residential lots on Alexander, most of which are owned by the cemetery.

Project History

The cemetery use predates the Zoning Ordinance requirement for a Conditional Use Permit (CUP), however it was issued a CUP in 1987 (CP87-03-020) for a .86 acre expansion (area along Alexander Avenue) of the existing 19.82- acre cemetery. In 1995, the cemetery was issued another CUP (CP95-03-038) for the addition of a 1,440 square foot 5-year temporary modular office building which expired when applicant failed to apply for a timely extension of the CUP. Due to financial problems the applicant has been unable to comply with all of the

conditions of that CUP including the construction of fencing and street improvements on Madden and Alexander Avenue and fencing.

In 1997, the applicant filed the current CUP application for the construction of a new mausoleum, however due to financial problems they have been unable to pursue the project. They have requested that the application be held in abeyance during the time that they were preparing a master plan. Several months ago they indicated that their master plan progress was going very slow and they revised their application to delete the mausoleum and include the 5-year extension of the temporary modular office building.

Staff has been unwilling to set this CUP for hearing until all of the prior conditions of approval have been installed or bonded for with the City Public Works Department. Recently Public Works has indicated that the bonding has been completed and the only outstanding condition of the previous CUP remaining is the fencing, which will be installed as a part of the current CUP.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The subject site is designated Private Open Space, General Commercial, Neighborhood Commercial and Neighborhood Business District on the General Plan Land Use/Transportation Diagram. The proposed project conforms to the General Plan in that cemeteries are a conditional use in the R-1-8, CG, and CN zone districts which conform to these general plan designations.

ANALYSIS

The primary issues analyzed include 1) conformance to the Zoning Ordinance requirements for the R-1-8 Zoning District, the CG General Commercial and CN Commercial Neighborhood zone districts and 2) neighborhood compatibility.

Conformance to the Zoning Ordinance

The project meets the setback requirements for the R-1-8, CG, and CN Zoning Districts in that the modular office building is located at least 25 feet from the front property line long Madden Avenue and the proposed fencing and sign meet the ordinance requirements for size, setbacks, and height. The landscaped fence along the new burial sites located on Alexander Avenue is a black 6- foot high steel tubular fence which will be located behind the sidewalk to match the location of the new fencing (approved under the previous CUP (CP95-03-038) on Madden Avenue and Alum Rock Avenue. An attractive new entry monument with a landscaped concrete sign monument and statuary is proposed for the corner of Alum Rock and Alexander.

Land Use Compatibility

The project has been carefully designed to include substantial landscaping and fencing along the residential interface to help ensure land use compatibility. Staff has also requested that the applicant install additional trellis, fencing and landscaping along the southeast elevation of the existing modular office building where the air conditioner units are located to help screen them from Capitol Avenue. The applicant has requested a five-

year extension for the existing temporary modular office building. The City is typically reluctant to approve the temporary use of structures since it is difficult to ensure that they will be removed in a timely fashion. A permanent building designed to match the character of the existing building complex would be a far superior design solution for this site, which is surrounded by a residential neighborhood. Since the applicant is willing to construct a fence and trellis screen with substantial landscaping to screen the air conditioner units on the modular, staff will support a shorter 3 year extension as long as the applicant will agree to bond for the removal of the modular building in three years.

The fencing and landscape treatment is also important along both Alum Rock and Capitol Avenues since there are future plans for light rail corridors on both streets. In addition, the property along Alum Rock Avenue is also in the Neighborhood Business District where an interesting, safe and efficient pedestrian streetscape should be encouraged. Staff is recommending additional trees be planted along all of these streets to augment the existing landscaping. According to the plan for the light rail corridors along Capitol and Alum Rock the appropriate street tree is the Sycamore. The Police Department approved this tree for police security tree since it has a high canopy, which allows light through for surveillance. This area has a high incidence of crime and as a result the Police Department recently requested that the wood slats in the cyclone fencing be removed along Capitol Avenue. The applicant proposed to submit a plan next year to replace the existing cyclone fencing along Capitol Avenue with black steel tubular fencing to match the existing fencing along Madden Avenue.

The project will be an overall improvement to the neighborhood and the applicant will be constructing curb, gutter, sidewalk, street trees and street lighting on Madden and Alexander Avenues.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Private Open Space, General Commercial, and Neighborhood Commercial on the General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence, CG, General Commercial, CN Neighborhood Commercial Zoning District.
3. The existing site has been previously developed with a cemetery that has been in operation for over 100 years.
4. The project does not reduce the existing on-site parking.
5. The proposed project includes a 1.17-acre expansion of cemetery for burial sites, which is located along Alexander Avenue at the location of 24 and 48 Alexander Avenue.
6. The proposal includes the demolition of two single-family residences located on the two above-stated parcels.
7. The proposal includes a 5-year extension of the existing temporary modular office building for which a 3-year extension is being recommended by staff.

8. The temporary modular office building is located 25 feet from the street.
9. The proposal also includes landscaping, fencing, signage and street improvements along Alum Rock Avenue and Alexander Avenue.
10. The proposed project does not include the construction of any new structures except fencing and signage.
11. The proposed expansion of the cemetery will be compatible with the surrounding predominant residential use and an overall improvement to the neighborhood because ample fencing and landscape screening will be installed and concrete curb, gutter and sidewalk will be installed on Alexander and Madden Avenue to improve the neighborhood.
12. The one story structure is designed to be residential in character, and will be painted to match the existing adjacent Church structure.
13. The parcel size is 27.37 gross acres which is substantially larger than the standard R-1-8 lot sizes of 6,000 square feet which are located in the surrounding neighborhood.
14. Under the provisions of Section 15303 l (1) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the Private Open Space, General Commercial, Neighborhood Commercial and Neighborhood Business District designations of the General Plan in that cemeteries are conditional uses in the R-12-8, CG, and CN zone districts, which conforms to these designations.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

The Planning Commission has considered all of the following criteria in evaluating the proposed demolition:

1. The failure to approve the permit would result in the creation of continued creation of continued existence of a nuisance, blight or dangerous condition
2. The failure to approve this permit would jeopardize public health, safety or welfare.
3. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San Jose.
4. The approval of the demolition of the building would result in a project, which is compatible with the surrounding area.

5. The demolition of the buildings without an approved replacement structure would not have an adverse effect on the neighborhood.

Finally, based upon the above-stated findings and subject to the condition set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San Jose Municipal Code requires that all land development approvals and applications for such approvals in the City of San Jose shall provide notice to the applicants for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San Jose -Santa Clara Water Pollution Control Plant (SJSCWPCP) represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of the SJSCWPCP to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approve development plans entitled, "Calvary Catholic Cemetery", dated 6/19/00, and last revised 4/17/01, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** This permit does not allow any new on-site exterior lighting.
6. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning. This permit does not authorize the removal of any trees.
7. **Landscaping.** 15-gallon trees shall be planted on all streets on the property in areas along the streets frontages where there are no existing trees as follows: London Plane trees on Alum Rock, Sycamore trees on Alexander, Valley Oak trees on Capitol Avenue, and London Plane trees on Madden Avenue. The applicant shall submit a Permit Adjustment to show the new required trees on the plans.
8. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Certification.** Pursuant to the San Jose Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement and Building prior to approval of the final inspection of the project.

10. **Permit Adjustment for Revisions to Fencing.** The applicant shall replace the wood slats in the existing cyclone fencing on Alum Rock Avenue and shall replace the existing cyclone gate on Alum Rock Avenue with a steel tubular design to match the fence design shown on the plan set, and shall submit a Permit Adjustment reflecting such changes within 60-days of the approval date of this Permit. All other fencing shall be provided as shown on the plans.
11. **Colors and Materials.** The modular office building colors and materials are to match the colors and materials of the church and the specifications on the plans.
12. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-04286) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage are fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
 - b. *Landscape.* Install street trees within the public right-of way along the entire street frontage per City Standards. The location of street trees will be determined at the street improvement stage. Street trees shown on these plans are conceptual only. Designated street trees are identified in item number 10, above
 - c. *Grading Permit.* A grading permit is required prior to the issuance of a Public Works Clearance.
 - d. *Soils Report.* A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or a Grading Permit.
 - e. *Electroliers.* The applicant shall install electroliers on the project frontage to the satisfaction of the Director of Public Works.
 - f. *Curb, Gutter, Sidewalk Repair and Closure of unused Driveway Cuts.* Remove and replace broken or uplifted curb, gutter and sidewalk along the project frontage. Repair, overlay, or reconstruct asphalt pavement as required by the Director of Public Works. Close unused driveway cuts.
 - g. *Storm Drainage.* Because the project involves a land disturbance of more than five acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with the construction activity. Copies of these documents must be submitted to the City Project Engineer prior to the issuance of a grading permit.
 - h. *Street Improvements.* The applicant shall bond for all street improvements including concrete curb, gutter, sidewalk, street trees, and streetlights on Madden and Alexander Avenues, and shall submit revised improvement plans to the Director of Public Works satisfaction.
 - i. *Dedication.* Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

- j. *Minor Improvement Permit.* The applicant shall be required to satisfy all of the Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit included plans, insurance, bonds/deposit certificate, and engineering and inspection fees.
13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP97-12-074 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Demolition.* Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San Jose Municipal Code.
14. **Fire Flow.** Required fire flow for the site is 2000 gpm, or as otherwise specified in writing by the Fire Department.
15. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING" shall be provided as required by the Fire Department.
16. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Landscaping.** Landscaping shall be providing as shown on the approved plans. All landscape areas shall be irrigated and permanently maintained.
19. **Temporary Modular Office Building.** The applicant shall submit a notarized letter signed by the property owner to the City of San Jose guaranteeing that the modular office structure will be removed three years from the date of the issuance of this permit.
20. **Hazardous Materials Storage.** Due to the proximity of this site to residential uses, this Permit specifically prohibits the use of hazardous materials in any area other than inside the structures as shown on the approved plans. No hazardous materials shall be stored in underground tanks or in any structure accessory to the main buildings.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

C: Building Division (2)
Engineering Services

Chris Kelly, 1345 Eighth St. Berkeley, CA 94710